

## AMENDMENT OF SOLICITATION

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1. AMENDMENT/MODIFICATION NO. 0002		2. EFFECTIVE DATE AUG 25, 2005	
3. ISSUED BY  DEPARTMENT OF THE ARMY, BALTIMORE DISTRICT CORPS OF ENGINEERS P.O. BOX 1715 BALTIMORE, MARYLAND 21203-1715  CODE: _____			
4. NAME AND ADDRESS OF CONTRACTOR (Name, street, county, State and ZIP Code)		4A. AMENDMENT OF SOLICITATION NO. W912DR-05-B-0006	
		4B. DATED (SEE ITEM 5) JUL 08, 2005	
5. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS  The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, <b>X</b> is not extended. BID OPENING DATE <b>2:00 PM, LOCAL TIME SEP 01, 2005.</b> Others must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 4 and 8, and returning <u>1</u> copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of the amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.			
6. ACCOUNTING AND APPROPRIATION DATA (If required) MAINTENANCE DREDGING DOGUE CREEK, FORT BELVOIR, VIRGINIA			
7. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  <u>SOLICITATION:</u>  (1) Section 00010, Standard Form 1442, Block 11: Change "120 calendar days" to read "150 calendar days".  (2) Section 00100, Page 6 of 44, Clause 52.233-2: Delete this clause.  (3) Section 00800, Clause 52.211-10, COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK: Change "one hundred and twenty (120) calendar days" to read "one hundred fifty (150) calendar days".  Except as provided herein, all terms and conditions of the document referenced in Item 4A, as heretofore changed, remains unchanged and in full force.			
8. NAME AND TITLE OF SIGNER (Type or print)		9. CONTRACTOR/OFFEROR  _____ (Signature of person authorized to sign)	10. DATE SIGNED

NSN 7540-01-152-8070

30-105

STANDARD FORM 30 (REV.10-83)  
REV BDO MARCH 2001

PREVIOUS EDITION UNUSABLE

(4) Section 00800, Page 40 of 44: Add the following to the bottom of this page:

"Wage Determination: A subcontractor hired by the Prime Contractor is covered by the Davis-Bacon Act. Subcontractors that are not covered by the Davis-Bacon Act are truck drivers who deliver supplies to the site of work. Bona Fide owner-operators of trucks who own and drive their own trucks are not covered by the Davis-Bacon Act but the contractor is required to submit certified payrolls to include their names and state that they are owner-operators."

(5) For Information Only: Below is a list of attendees to the site visit.

Attendees at Site Visit:

Name	Organization	Phone
Martin Firth	Lake Services, Inc.	800-638-4937
Jeff Price	Corps of Engineers	410-960-2265
Ron Maxwell	DMWR, Ft. Belvoir	703-898-9208
Jeff Boltz	EA Engineering	410-329-5179
Len Melka	Melka Marine	703-523-3483
John Olgeirson	McLean Contracting	410-553-6700
Stacey Underwood	Corps of Engineers	410-962-4977
Linda M. Evans	Corps of Engineers	410-779-7542
David M. King	DMWR, Marina	703-805-3745
Al Johnson	J-Way	440-934-1020
Michael Hudson	Ft Belvoir Env.	703-806-0046
Regina Wheeler	CT-A	410-962-1894
Robert Blama	Corps of Engineers	410-962-6068

(6) Section 2, Page 1, Paragraph 1.2: Immediately after the first sentence of this paragraph insert the following: "The tipping fee of \$12 per cubic is to be paid by the Contractor to the Possum Point Power Plant in accordance with an agreement between the Contractor and Possum Point and shall be included as part of the bid price."

(7) Section 2, Page 1, Paragraph 1.3: Add the following sentence to the end of this paragraph. "Removal and reinstallation of the floating docks at the boat ramp area shall also be included in this payment item."

(8) Section 2, Page 5, Paragraph 12.2: Add the following to the end of this paragraph: "The Possum Point Power Plant is requiring a tipping fee of \$12 per cubic yard of dredged material placed at Ash Pond "D". This fee shall be part of the price for Bid Item No. 0002. If the Contractor over dredges and places non paid yardage at the Possum Point Placement Site, any fees applied by Possum Point shall be the sole responsibility and paid for by the Contractor at no additional expense to the Government."

(9) Section 2, Page 7, Para 14.5 (c): Add the following to the end of this paragraph: "The hourly rate for security for this project is \$23.80, all inclusive."

(10) Section 2, Page 7, Para 14.5 (d): Add another sentence to say "The tipping fee at the Possum Point Facility is \$12.00. per cubic yard for dredged material placed on-site.

(11) Section 2, Page 8, Paragraph 14.5(v): Immediately after this paragraph insert the following new paragraph 14.5(w) "(w): The Contractor shall enter into and be responsible for the sales agreement with Possum Point in accordance with Appendix C."

(12) ATTACHMENTS, Report of Operations Form: Immediately after this form insert the attached Appendix C

DRAWINGS:

(13) Sheet C-6: Add the following note to this plate:

"BOAT RAMP AREA: THE CONTRACTOR SHALL COORDINATE DREDGING OPERATIONS AROUND THE BOAT RAMP AREA WITH THE CONTRACTING OFFICER. THE CONTRACTOR SHALL REMOVE AND STORE THE FLOATING DOCKS, DREDGE AROUND THE EXISTING PILINGS AND BOAT RAMP, AND REINSTALL THE FLOATING DOCKS IN THEIR ORIGINAL PLACE."

ATTACHMENT: A/S

## Appendix C

**General Terms and Conditions**  
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## **General Terms and Conditions**

### **Construction and Maintenance Materials, Equipment and Services - Rev. 02-27-2002**

#### **1. Scope of Attachment**

This attachment provides the terms and conditions by which Supplier agrees to sell and deliver and Purchaser agrees to purchase and receive the Materials, Equipment and Services specified on the face of the Purchase Order, subject to the terms of this Agreement.

#### **2. Definitions**

The following terms, when initially capitalized, shall have the meanings indicated below:

- **Acceptance**: Occurs upon the completion of the Work, or any portion thereof, to the satisfaction of Purchaser.
- **Agreement**: The integrated contract between Purchaser and Supplier, consisting of the Purchase Order and all documents listed in, attached to and/or incorporated therein by reference pertaining to this transaction.
- **Compensation**: The total consideration due Supplier for the full and complete performance of the Work.
- **Confidential Information**: Information and materials provided in any medium or format, including but not limited to, the fact of, reasons for and contents of this Agreement, proprietary technical and business information, customer lists, trade secrets, know how, forecasts, business plans, financial statements, and related information and materials.
- **Delivery**: The date that the Materials, Equipment, and/or Services are received at the "SHIP TO" location identified on the face of the Purchase Order.
- **Materials and Equipment**: All goods to be provided by Supplier hereunder.
- **Performance Schedule**: The language or graphic depiction describing the start date, any intermediate milestone dates and the completion date by which Supplier is required to perform its various obligations under the Agreement.
- **Purchase Order**: The procurement document, which among other things, identifies the Purchaser and Supplier.
- **Purchaser**: Legal entity or entities, including the officers, directors, employees and agents thereof, identified as "Purchaser" in the Purchase Order. Wherever used in the Agreement documents, the terms, "buyer", "company", "customer", and/or "owner" shall be synonymous with Purchaser.
- **Services**: All services to be provided by Supplier hereunder.
- **Supplier**: The provider of the Material and Services, or a combination thereof, required by the Agreement. Wherever used in the Agreement documents, the terms Contractor, Seller and Vendor shall be synonymous with Supplier.
- **Terminated Work**: The portion of the Work to be terminated.
- **Termination Charge**: Charge to be paid by Purchaser consisting of the lesser of one hundred five percent (105%) of the verified Termination Costs and one hundred five per cent (105%) of the total Compensation allocable to the Work completed as of the effective date of termination.
- **Termination Costs**: The direct and associated indirect costs incurred by Supplier in the performance of the Work prior to termination together with any costs reasonably and prudently incurred by Supplier incidental to termination. In no event shall the

Termination Costs include unabsorbed overhead or any allowance for unrealized profit on the terminated portion of the Work.

- Work: The totality of obligations required to be performed by Supplier hereunder.
- Work Products: All deliverables in this Agreement, including work in process, created or produced by Supplier and any of its subcontractors.
- Y2K Compatible: The Construction and Maintenance Services which: (i) accurately process date data of the twentieth and twenty-first centuries, including leap year calculations, without a decrease in functionality, (ii) operate during and after the year 2000 without error relating to date data, (iii) do not abnormally end or provide invalid or incorrect results as a result of date data, (iv) have been designed to ensure year 2000 compatibility, and (v) provide that all date-related user and data interface functionalities and data fields include the indication of the century.

### 3. **Non-binding Counteroffer**

The terms and conditions making counteroffers of Supplier non-binding, shall be as stated in the Purchase Order.

### 4. **Invoices and Payments**

The terms and conditions for invoices and payments shall be as stated in the Purchase Order.

#### A. Invoices

Except as otherwise stated in this Agreement, Supplier shall submit invoices upon Supplier's Delivery of all Goods and/or completion of all Services. Each such invoice shall be submitted by Supplier to the location shown in the purchase order, and shall include: (i) this Agreement number, (ii) an itemization of the specific Goods and/or Services provided by Supplier; (iii) the applicable date of Delivery for all such Goods and/or Services; (iv) an itemization of the respective unit prices, if applicable, for which payment or partial payment is invoiced; (v) the total invoice amount; and (vi) the Purchaser's location to which the goods and/or services have been delivered. If Supplier is providing Goods or Services to Purchaser under more than one agreement, each such agreement shall be invoiced separately.

#### B. Payment

Except as otherwise stated in this Agreement, Purchaser shall use commercially reasonable efforts to make payment for all Goods and Services provided by Supplier within thirty (30) days following the later of: (i) the date of Delivery; or (ii) the date of Purchaser's actual receipt from Supplier, at the location designated above, of an invoice conforming to the requirements set forth at Section 4(A) of this Agreement and accurately reflecting the terms and conditions of the Purchase Order to which it relates.

Notwithstanding anything herein to the contrary, Purchaser may withhold from payments due or to become due to Supplier: (i) ten percent (10%) of all invoiced

amounts pending receipt of any documentation that may be specified in this Agreement, and (ii) an amount sufficient to protect Purchaser completely from any and all breaches, claims, liens, losses, damages or expenses actually incurred or reasonably anticipated to be incurred by Purchaser in connection with any agreement by and between Purchaser and Supplier, including without limitation this Agreement, until the breach, loss, damage or expense has been cured or same has been satisfied, terminated or released to Purchaser's satisfaction.

Notwithstanding anything herein to the contrary, Purchaser shall have the additional right to set-off against payments made to Supplier hereunder for amounts owed by Supplier to Purchaser, whether or not pursuant to this Agreement.

## **5. Warranties**

### **A. Quality of Services**

Supplier warrants and represents that the Services and Work shall: (i) be performed in a good and workmanlike manner in accordance with professional industry standards (with the level of skill, knowledge and judgment required or reasonably expected of providers of comparable services), (ii) meet the terms of this Agreement, and (iii) be free from defects. This warranty for quality of Services shall be effective for two (2) years after Acceptance of all Work.

### **B. Quality of Materials and Equipment**

Supplier warrants and represents that each item of Materials or Equipment provided pursuant to the Agreement shall: (i) strictly conform to the description and specifications contained in the Agreement; (ii) be free from defects in workmanship, materials and design, (iii) be merchantable, (iv) be fit for its intended use, and (v) be new. Unless otherwise stated in the Purchase Order, no surplus, rebuilt, reconditioned or used material or equipment shall be provided pursuant to the Agreement.

### **C. Warranty Claims**

Upon receipt of oral or written notice from Purchaser of a warranty claim, Supplier shall, if required by Purchaser, at Supplier's sole expense, correct any Work or reperform any Work that fails to conform to the warranties herein and shall promptly take down, remove, and at its sole expense, promptly repair or replace as determined by Purchaser, all portions of the Work that fail to conform to the warranties herein. Supplier shall also perform such tests as Purchaser may require to verify that the repairs or replacements comply with the requirements of the Agreement. The expense of all Work incidental to such correction, reperformance, repair, replacement or testing shall be borne solely by Supplier. If Supplier fails within a reasonable time or refuses to repair, replace, correct or re-perform as required by Purchaser, Purchaser may, at its sole discretion, repair, replace, correct, or re-perform any Work or take other remedial action. The parties agree that if Purchaser does not require repair, replacement, correction or reperformance, Purchaser shall make a corresponding reduction in the Compensation. Any repair, replacement, correction or reperformance made

pursuant to the foregoing warranties shall be warranted for a period of one (1) year after the later of: (i) completion of such repair, replacement, correction or reperformance, or (ii) the end of the original warranty period.

D. Title

Supplier warrants and represents to Purchaser that it owns all right, title and interest in and to the Materials and Equipment, or if not the owner, Supplier has full authority to sell the Materials and Equipment to Purchaser on behalf of owner. Supplier further warrants to Purchaser that the Materials and Equipment are free from any and all security interests, claims, demands, liens, or other encumbrances.

In the event any item of Materials or Equipment fails to conform to this warranty of title, Supplier shall defend the title thereto and shall, at Purchaser's option and at no cost to Purchaser, promptly remove, or cause to be removed, any such security interest, claim, demand, lien or other encumbrance, or shall replace the item with a similar item conforming to this warranty of title.

E. Personnel

Supplier warrants that it shall employ, or obtain the services of, such competent and qualified personnel as may be required to perform the Work. If requested by Purchaser, Supplier shall furnish Purchaser with evidence of the qualifications, education and experience of its personnel. Purchaser shall have the right to require the removal of any of Supplier's or its subcontractor's personnel from the Work, if, in the sole judgment of Purchaser, such removal is in Purchaser's best interest. Any of Supplier's or its subcontractor's personnel judged unsatisfactory by Purchaser shall be promptly removed from the Work and other qualified personnel assigned to the Work at no additional cost to Purchaser.

F. Year 2000 Compliance Warranty

Supplier represents and warrants to Purchaser that the Materials, Equipment and/or Services provided hereunder are Y2K Compatible for the term hereof.

Notwithstanding anything herein to the contrary, any provisions of this Agreement which tend to limit the scope or length of this Y2K Warranty or to eliminate the liability of Supplier under this Y2K Warranty shall have no application.

The parties agree that failure of the Materials, Equipment and/or Services to be Y2K Compatible shall not be deemed an event of Force Majeure.

G. Disclaimer

**THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED.**

**THE REMEDIES SET FORTH IN THIS ARTICLE ARE IN ADDITION TO, AND NOT IN LIEU OF, SUCH OTHER REMEDIES AS MAY BE**

**AVAILABLE TO PURCHASER AT LAW OR IN EQUITY. SUPPLIER SHALL NOT BE EXCUSED FROM ITS OBLIGATIONS UNDER THIS ARTICLE BY PURCHASER'S FAILURE TO INSPECT, FAILURE TO DISCOVER DEFECTIVE WORK, APPROVAL OF OR PAYMENT FOR THE WORK OR ANY PORTION THEREOF.**

H. Subcontractor Warranties and Representations

Should Supplier receive from any subcontractor or supplier warranties and/or representations of broader or greater scope than those above, then Supplier shall provide the same to Purchaser. Supplier shall include provisions in its subcontracts that pass through all such warranties and representations to Purchaser and obligate the subcontractor or supplier directly to Purchaser thereunder.

**6. Acceptance**

Acceptance of the Work or any portion thereof by Purchaser shall not relieve Supplier of its obligation to comply in all respects with the requirements of the Agreement.

Payments shall not constitute Acceptance and shall not be considered as satisfactory performance by Supplier, either in whole or in part, nor shall any payment be construed as Acceptance by Purchaser of any defective part of the Work.

**7. Ownership of Intellectual Property**

Supplier agrees that any and all creations designed, developed, produced, made or supplied by Supplier or its subcontractors, if any, in connection with this Agreement shall be considered "works made for hire" under the copyright laws of the United States and shall be the sole and exclusive property of Purchaser. Purchaser shall own all right, title and interest in and to the copyrights for such creations. If such creations are not deemed to be works made for hire under 17 U.S.C. §101, Supplier hereby transfers and assigns to Purchaser, and Purchaser hereby accepts all right, title and interest in and to all such copyrights to Purchaser. Supplier hereby transfers and assigns to Purchaser, and Purchaser hereby accepts, all right, title and interest in and to any and all trade secrets, inventions, and other intellectual property developed hereunder. Supplier further agrees to give all further assurances and to execute all documents which Purchaser believes are necessary to evidence title and ownership in Purchaser. Purchaser shall prepare such documents, at Purchaser's expense. Supplier agrees to incorporate the substance of this Article, including this subparagraph, in all subcontracts under this Agreement. Supplier agrees that despite any notices or markings to the contrary, Purchaser owns all rights, title, interest in and to and has the unrestricted right to reproduce and utilize any and all Work Products created, invented, developed or produced pursuant to this Agreement in a commercially reasonable manner as necessary for Purchaser to operate, maintain or upgrade its equipment and facilities. Purchaser shall retain ownership of all information, design, materials and data provided to Supplier unless otherwise provide herein.

## **8. Indemnity**

Supplier agrees to indemnify, save harmless and, at Purchaser's sole option, defend Purchaser and Purchaser's directors, officers, employees and agents from and against all claims, demands, damages, costs, losses, liabilities, causes of action, suits, fines, penalties and expenses (including reasonable attorneys' fees through the final appeal), whether at law, in equity, or administrative in nature, in any manner arising out of, resulting from, caused by or in connection with: (i) this Agreement, (ii) Supplier's breach of this Agreement, (iii) personal injury or death, (iv) property damage, (v) violation of federal, state or local law, regulation, rule or ordinance pertaining to the Work, or (vi) failure of the Materials, Equipment and/or Services to be Y2K Compatible. Nothing herein shall be construed as making Supplier liable for any injuries, deaths or damage caused by the sole negligence of Purchaser.

## **9. Insurance**

Supplier shall obtain and maintain, and require its subcontractors to obtain and maintain, the following policies of insurance during the term hereof:

- A. Workers compensation as required by the statutory benefit laws of the state where the Services are to be performed or as required by any other state where the employee performing the Services is normally employed
  - B. Employers liability insurance with a total limit of at least \$2,000,000 each accident for bodily injury by accident and \$2,000,000 each employee for bodily injury by disease.
  - C. Commercial general liability insurance with a total limit of at least \$2,000,000 per occurrence (occurrence form policy). Such insurance shall include, but not be limited to, specific coverage for: (i) contractual liability encompassing the Article entitled Indemnity, (ii) personal injury and property damage liability, (iii) products/completed operations liability, and (iv) where applicable, explosion, structure and ground collapse, and underground hazards coverage.
  - D. Automobile liability insurance covering bodily injury and property damage with a total limit of at least \$2,000,000 per accident. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).
- Before beginning performance, Supplier shall provide certificates of insurance to Purchaser evidencing Supplier's coverages and limits required by this Agreement.

The amount of insurance required above may be satisfied, at Supplier's option, through the purchase by Supplier of a separate excess umbrella liability policy together with lower limit primary underlying insurance. The coverages required in above shall provide for claims by one insured against another such that, except for the limits of insurance, the insurance shall apply separately to each insured against whom a claim is made or suit is brought.

Supplier waives and will require its insurers to waive all rights of recovery against the Purchaser, its directors, officers and employees, whether in contract, tort (including negligence and strict liability) or otherwise.

Supplier and its authorized subcontractors and assignees shall cause their insurers to name Dominion Resources Inc., its affiliates and subsidiaries, and the officers, directors, employees and agents of each of them, as additional insureds to the coverages required above. These additional insureds are additional insureds to the extent required hereunder, but only for liability arising out of Supplier's Work.

Supplier and Supplier's insurer agree that each of these policies is primary with respect to any other similar insurance maintained by Purchaser. These policies may not be canceled, nonrenewed or materially changed without giving 30 days prior written notice to Purchaser.

## **10. Changes**

Purchaser may, at any time, by written change order and without notice to Supplier's surety, if any, make changes in, additions to or deletions from the Work to be performed pursuant to this Agreement. If any such change significantly increases or decreases the time required for the performance of Supplier's obligations hereunder, an equitable adjustment shall be made in the Performance Schedule. If this Agreement is being performed on a fixed-price basis, and if any such change significantly increases or decreases the cost to Supplier of performing the Work, then there shall be an equitable adjustment in the Compensation. Supplier shall not be entitled to an adjustment in the rate of Compensation due for any change if this Agreement is being performed on a cost-reimbursable or time and materials basis.

Supplier's right to an equitable adjustment in Compensation, Performance Schedule, or both, as a result of any change initiated by Purchaser pursuant to this Article, is expressly conditioned upon Supplier providing Purchaser with a written request for such adjustment within ten (10) days after receipt of Purchaser's change order. Such request for an equitable adjustment in Compensation, Performance Schedule, or both, shall include a statement setting forth in detail, with a suitable breakdown by cost of Materials, Equipment and Services, Supplier's estimate of the change in its costs, if any, together with any proposed adjustment in Compensation, Performance Schedule, or both. Supplier shall proceed with its performance obligations as changed prior to or pending agreement upon an equitable adjustment in the Compensation, Performance Schedule, or both, and shall not halt or delay performance of the Work because of any failure so to agree.

In order to clarify the Work, the administrative requirements of this Agreement or the procedures to be followed by Supplier and its subcontractors and their employees, Purchaser may issue administrative instructions from time to time during performance under this Agreement. Such administrative instructions shall not be construed as changes in this Agreement.

## **11. Specifications, Plans and Drawings**

- A. The parties agree that specifications, plans and drawings, both general and detailed, attached to the Purchase Order or referenced in this Agreement are incorporated herein as an integral part of the Agreement.
- B. Supplier agrees that its execution of this Agreement shall be deemed conclusive evidence of the prior examination by Supplier of the specifications, plans and drawings and confirmation that the same are sufficient and appropriate for their intended purpose. Detailed drawings shall take precedence over general drawings for the same part of the Work. Specifications and detailed drawings that may be prepared or approved by Purchaser after the execution of this Agreement are, so far as the Work calls for and as may be fairly inferred from the original specifications, plans and drawings, to be deemed a part of such specifications, plans and drawings and the resulting Work shall be performed without any change in the Compensation.
- C. Supplier shall notify Purchaser of all conflicts among the applicable plans, specifications and drawings and any laws, rules, regulations, ordinances and restrictions that come to Supplier's attention or should have come to its attention through the exercise of due care. If Supplier knows, or through the exercise of due care should have known, that the performance of the Work pursuant to this Agreement is contrary to any such laws, rules, regulations, ordinances or restrictions and fails to give Purchaser notice thereof prior to such performance, Supplier shall bear all costs arising therefrom.
- D. Any discrepancies, inconsistencies or ambiguities discovered by Supplier among the specifications, plans, drawings and site conditions shall be immediately reported to Purchaser.

## 12. Delays

### A. Force Majeure

Neither Purchaser nor Supplier shall be responsible or liable for, or deemed in breach of this Agreement because of, any delay in the performance of their respective obligations pursuant to this Agreement due solely to circumstances beyond the reasonable control and without the fault or negligence of the party experiencing such delay, including, but not limited to, acts of God; unusually severe weather conditions; strikes or other labor difficulties; war; riots; requirements, actions or failures to act on the part of governmental authorities; inability despite due diligence to obtain required permits or licenses; accident; fire; damage to or breakdown of necessary facilities; or transportation delays or accidents (such causes hereinafter called "Force Majeure"); provided, however, the party experiencing the Force Majeure shall exercise due diligence in endeavoring to overcome any Force Majeure impediment to its performance, but settlement of its labor difficulties shall be entirely within its discretion; and provided further that the party experiencing the Force Majeure shall promptly give oral notification to the other party. Such oral notification shall be confirmed in writing within five (5) days after such party has learned of the Force Majeure and every thirty (30) days thereafter, and such written notification shall give a full and complete explanation of the Force Majeure delay and its cause, the status of the Force Majeure, and the actions such party is taking and proposes to take to overcome the Force Majeure. The party experiencing the delay shall undertake reasonable measures to make up for the time lost through delay without additional Compensation. If performance by either party is delayed due to Force Majeure, the time for that performance shall be extended for a period of time reasonably necessary to overcome the effect of the delay, subject, however, to Purchaser's right to terminate this Agreement in whole or in part.

### B. Delays Caused by Purchaser

If Purchaser delays Supplier's performance, then there shall be an equitable adjustment in the Performance Schedule. If Supplier's performance is delayed due solely to acts constituting intentional interference by Purchaser and if Purchaser is not excused for such delay pursuant to paragraph A above, there shall be an equitable adjustment in the Compensation and/or Performance Schedule. Supplier shall not be entitled to an adjustment in the rate of Compensation for any delay caused by Purchaser if this Agreement is being performed on a cost reimbursable or time and materials basis. Supplier shall give Purchaser prompt written notice of the delay and shall submit a written request for an equitable adjustment in Compensation, Performance Schedule, or both, within ten (10) days after the end of the delay and shall provide supporting documentation pursuant to the Article entitled Changes. Failure to submit a timely notice of delay and a request for an equitable adjustment shall be deemed a waiver of Supplier's right to an equitable adjustment. Except as provided in this Article, Purchaser shall not be liable for any increased costs incurred by Supplier due to any delay in Supplier's performance.

C. Delays Caused By Supplier

If Supplier falls behind schedule to the extent that the completion date or any intermediate milestone date is in jeopardy as determined by Purchaser, Supplier shall recover the schedule at no additional cost to Purchaser. The means for schedule recovery shall include, but not be limited to, overtime, increased manning, multiple shifts, additional materials and equipment, or any combination thereof. Supplier shall submit a schedule recovery plan that demonstrates that the proposed course of action will ensure that the Work is finished by the scheduled date.

D. Suspension of Work

Purchaser may, without cause, order Supplier in writing, to suspend performance of the Work, in whole or in part, for such period of time as Purchaser may determine. Purchaser shall not be liable for the cost of any unauthorized Services performed by Supplier during any such period of suspension, and Supplier shall not place further orders or enter into further subcontracts for Materials, Equipment or Services relating to the suspended Work or Services. Delays in Supplier's performance ordered by Purchaser shall be considered a delay caused by Purchaser.

E. Documentation of Delay Time

Supplier shall identify all delay time as such on its standard timesheets. Purchaser's or Supplier's signature on such timesheets shall not be deemed to be evidence that either party assumes responsibility for such delay. Timesheets do not constitute official notice of delays, nor official requests for adjustment, as are required hereunder. Notwithstanding the foregoing, all delay time not identified as such on applicable timesheets shall be for Supplier's account.

**13. Default**

- A. If Supplier breaches or fails to perform any of its obligations under this Agreement, Purchaser may, after the giving of reasonable notice to Supplier, remedy, or cause any surety to remedy, such default, utilizing such persons or firms and such Equipment and Materials as may be necessary for that purpose, and Supplier or its surety shall be responsible for the cost thereof. Purchaser may recover from Supplier the amount of any loss or damage, liquidated or unliquidated, suffered or incurred as a result of such default, including but not limited to reasonable attorneys' fees, penalties, and increased costs. Purchaser may deduct and withhold from payments otherwise due Supplier any amounts required or reasonably anticipated to be required to remedy such default.
- B. If Supplier fails to commence or prosecute the Work in accordance with the Agreement; causes stoppage, delay or interference with the work of Purchaser or other contractors; or breaches any other condition or fails to perform any other obligation of this Agreement, then in any such event Purchaser may cancel this Agreement; provided, however, except in the event of stoppage, delay or interference by Supplier, Purchaser shall first have given Supplier written notice

specifying the event of default and Supplier shall have failed to remedy such default within three (3) days after the giving of such notice by Purchaser.

- C. The foregoing remedies for default by Supplier shall be considered distinct, separate and cumulative, and shall be in addition to and not in lieu of any other rights and remedies given elsewhere in this Agreement or available to Purchaser at law or in equity.
- D. If this Agreement is canceled and a court later determines that good cause did not exist to cancel this Agreement, such cancellation shall be deemed a termination pursuant to the Article entitled Termination, and Purchaser's liability shall be limited to the amount payable as Termination Costs thereunder.
- E. Except as otherwise specified in this Agreement, Supplier shall have the rights and remedies available at law or in equity for breach of this Agreement by Purchaser; provided, any alleged breach or default by Purchaser hereunder shall be deemed waived unless Supplier, within seven (7) days of such alleged breach or default, gives written notice to Purchaser specifying the details thereof.

#### **14. Termination**

Purchaser may, without cause, terminate this Agreement at any time, in whole or in part, by providing written notice of termination to Supplier specifying the Terminated Work. Such termination is to be effective as specified in Purchaser's notice but not earlier than one (1) day after Supplier's receipt of such notice. Upon receipt of such notice, Supplier shall: (i) discontinue the Terminated Work in accordance with the Purchaser's instructions, (ii) thereafter perform only such portion of the Work not terminated, (iii) not place further orders or enter into further subcontracts related to the Terminated Work, and (iv) terminate all existing orders and subcontracts insofar as such orders and subcontracts relate to the performance of the Terminated Work. Upon termination, Supplier shall deliver to Purchaser the Materials and Equipment for which Purchaser has made payment, including Materials and Equipment in manufacture, but not yet completed and all Work Products, whether or not in final form, created by Supplier or its subcontractor prior to termination.

Within thirty (30) days after the effective date of termination, or such later date as may be mutually agreed to by the parties, Supplier shall provide Purchaser with a detailed summary and supporting documentation that identifies Termination Costs. The Termination Costs shall be subject to audit and verification by Purchaser in accordance with the Article entitled Records and Right to Audit, such audit to be initiated, if at all, within ninety (90) days after Purchaser receives from Supplier the summary and supporting documentation of the Termination Costs.

Prior to determining the amount of any Termination Charge which may be owed by Purchaser hereunder, Termination Costs shall be reduced by the total payments previously made to Supplier that were allocable to the completed portion of the Work. And by any claims which Purchaser may have against Supplier in connection with the

completed portion of the Work. If the payments previously made to Supplier by Purchaser exceed the Termination Costs as determined in accordance with the preceding sentence, Supplier shall promptly pay the difference to Purchaser, and no Termination Charge shall be owed by Purchaser.

Upon termination and payment by Purchaser of any Termination Charge, if one is owed, Purchaser shall have no further obligation to Supplier with respect to the Terminated Work.

## **15. Compliance with Laws**

### **A. General**

Supplier shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of the Work, including but not limited to all laws, rules, regulations and ordinances pertaining to occupational health and safety.

### **B. Nondiscrimination and Subcontracting**

Supplier agrees to comply with all applicable provisions, and successor provisions thereto of Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended; and implementing regulations set forth in 41 C.F.R. Sections 60-1, 60-250 and 60-741 and the applicable provisions relating to the utilization of small and minority business concerns as set forth in 15 U.S.C. Section 637, as amended. Supplier agrees that the equal opportunity clause set forth in 41 C.F.R. Section 60-1.4, the affirmative action clauses set forth in 41 C.F.R. Sections 60-250.4 and 60-741.5 and the clauses relating to the utilization of small and minority business concerns set forth in 15 U.S.C. Section 637(d)(3) and 48 C.F.R. Section 52.219.8 are hereby incorporated by reference and made a part of this Agreement. If this Agreement has a value of more than \$500,000, Supplier shall adopt and comply with a small business and small disadvantaged business subcontracting plan which shall conform to the requirements set forth in 15 U.S.C. Section 637(d)(6). The provisions of this paragraph shall apply to Supplier only to the extent that such provisions are required of Supplier under existing law, Supplier is not otherwise exempt from said provisions and compliance with said provisions is consistent with and not violative of 42 U.S.C. Section 2000(e) et seq., 42 U.S.C. Section 1981 et seq., or other acts of Congress.

Purchaser is committed to the development of Small Disadvantaged and Women-owned small businesses. Purchaser requires that Small Disadvantaged and Women-owned small businesses be provided maximum practicable opportunities to participate in any subcontracts awarded by Supplier. If this Agreement is valued at \$500,000 or more, Supplier shall report actual Small Disadvantaged and Women-owned small business subcontract results on a quarterly basis to Purchaser on the form provided by Purchaser.

C. Fines

Supplier shall be solely responsible for and shall pay all costs and expenses associated with all fines or other penalties incurred for noncompliance with any federal, state, or local law, regulation, rule or ordinance pertaining to the Work, or for delays or stop work orders imposed by a government agency or court due to Supplier's noncompliance with federal, state or local law, regulation, rule or ordinance pertaining to the Work.

**16. Permits and Licenses**

Supplier shall obtain any licenses and permits which, under federal, state or local law, regulation, rule or ordinance, it may be required to hold in order to perform its obligations under this Agreement. Supplier shall hold and maintain such licenses and permits for so long as this Agreement shall remain in effect.

Supplier and all subcontractors shall comply with all applicable laws that require registration and licensing of contractors and subcontractors. If requested, Supplier shall provide copies of such registration or licenses to Purchaser.

**17. Patent, Copyright, Trademark and Trade Secret Protection**

In addition to and not in lieu of the remedies provided to Purchaser in the Article entitled Indemnity, Supplier shall, at its own expense: (i) defend any suit or proceeding brought against Purchaser based on an allegation that all or any portion of the Material, Equipment or Services supplied hereunder, or use thereof for its intended purpose, constitutes an infringement of any claim of any patent, copyright, trademark or trade secret, provided Purchaser notifies Supplier in writing, (ii) pay all damages and costs, including reasonable attorneys' fees through the final appeal, awarded in any suit or proceeding, or agreed by the parties in settlement, (iii) indemnify Purchaser against any costs and expenses incurred by Purchaser, including the above and those for providing information and assistance to Supplier for the defense of said suit or proceeding or the settlement of such claims, and (iv) at Purchaser's option and at no cost to Purchaser, procure for the Purchaser the right to continue using the Materials, Equipment and/or Services, or portion thereof, replace all that infringes with substantially equivalent noninfringing replacements, or modify same to be noninfringing, if there is infringement or contributory infringement of a third party by Purchaser's use of the Materials, Equipment or Services acquired from Supplier hereunder, and use of same by Purchaser is enjoined, or pro-rate and refund such Compensation as is attributable to the Material, Equipment and /or Service in question.

These provisions shall not apply to the extent that the Materials, Equipment and/or Services were supplied in accordance with Purchaser's design or instructions where compliance therewith has caused Supplier to deviate from its normal course of performance, were modified by Purchaser or were combined by Purchaser with items not furnished hereunder, and a suit or proceeding is brought against Purchaser solely by reason of said design, instruction, modification or combination.

## **18. Confidential Information**

Purchaser and Supplier may have a proprietary interest in certain Confidential Information furnished to each other pursuant to this Agreement. Purchaser and Supplier shall keep in confidence and shall not disclose, without the prior written consent of the disclosing party, any such Confidential Information, provided it is disclosed in writing and marked as Confidential Information of disclosure at the time of disclosure.

Notwithstanding the foregoing, Purchaser may disclose such Confidential Information to its suppliers or contractors for the purpose of securing services, securing goods or seeking bids for such services and/or goods in connection with the operation, modification or maintenance of Purchaser's facilities, provided Purchaser requires such suppliers and contractors to return or destroy all written materials containing Confidential Information and to agree not to make any further disclosure of same or to use it for any purpose other than that for which it was disclosed by Purchaser.

The provisions of this Article shall not apply to Confidential Information which (i) is or becomes generally known or available to the public without breach of this Agreement, (ii) is received from a third person without limitation or restriction at the time of disclosure, or (iii) was known to recipient, as can be documented by recipient's written records, prior to receiving the disclosure by the disclosing party.

Notwithstanding these restrictions, Purchaser or Supplier may disclose such Confidential Information where required by any court, government agency or proper discovery request or to the extent necessary to secure governmental authorization. Prior to making any such disclosure, the recipient of Confidential Information shall, to the extent practicable: (i) provide the discloser with timely advance notice of its intent to comply with the disclosure requirement in order to allow the discloser to make objection to the disclosure requirement, (ii) minimize the amount of Confidential Information to be disclosed consistent with the interests of the discloser and the requirements of the court, government agency or discovery request involved, and (iii) make reasonable efforts to secure confidential treatment of the Confidential Information to be provided or to seek revision of the information request to minimize the amount of Confidential Information to be supplied.

Upon request of Purchaser, and in any event upon termination of the Agreement, Supplier shall return all Purchaser's Confidential Information including all originals, copies and records thereof, or furnish an officer's certification of destruction of the Confidential Information to Purchaser.

Purchaser shall have the right to reproduce in any format any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Purchaser and shall be subject to the same restrictions on use and disclosure as are contained herein.

**19. Records and Right to Audit**

Supplier shall keep accurate and complete books of account, records, documents and other evidence related to the negotiation, pricing and performance of this Agreement, and any change or modification hereto. Supplier shall maintain accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred in performing this Agreement. For all cost reimbursable, labor hour, time and material, adjustable or other payment provisions based on Supplier's costs, and for all claims for equitable adjustment, termination charges, additional compensation or damages for delay or other alleged breach of this Agreement by Purchaser, Purchaser or its representatives shall have the right to inspect and audit such books, records, documents and other evidence, including all such documentation pertaining to any Supplier personnel employed under this Agreement or employed by Supplier to support the performance of this Agreement.

All materials and documents described above and required for such audit shall be made available at Supplier's offices, at all reasonable times, for inspection, audit and reproduction, until the later of the expiration of three (3) years from the date of final payment hereunder or the final settlement or disposition of any claim made pursuant to this Agreement. Each party shall bear its own costs incurred in connection with any such inspection or audit.

**20. Taxes**

All federal, state and local property, license, privilege, excise, gross receipts, value added or other similar taxes that may now or hereafter be imposed on this transaction, any Materials, Equipment or Services provided by Supplier hereunder, or the Work performed by Supplier, shall be paid by Supplier and shall be included in the Compensation.

**21. Hazardous Materials**

If any of the materials furnished pursuant to this Agreement are designated by laws, rules, regulations or ordinances as hazardous or toxic, either in the form to be furnished or as waste upon disposal, Supplier shall notify Purchaser and propose a nonhazardous or nontoxic alternative if such an alternative exists. Supplier shall package and label all such materials in accordance with applicable laws, rules, regulations and ordinances and with all applicable certificates, warnings and instructions for shipping, safety, handling exposure and disposal in a form sufficiently clear for use by non-technical personnel.

**22. Assignment and Subcontracting**

**A. Supplier**

Unless Purchaser grants prior written consent, Supplier shall not assign any rights or delegate any duties or obligations hereunder or transfer or otherwise dispose of this Agreement or any part hereof or its rights, title and interest herein, nor assign any monies due or to become due hereunder. Any assignment or delegation

made without the express written approval of Purchaser shall be null and void. Any assignment of this Agreement so consented to shall not, however, relieve Supplier of responsibility for the due and full performance hereof. Supplier shall be liable to Purchaser for all acts and omissions of its assignees or other transferees.

Supplier shall provide a complete list of proposed subcontractors and suppliers upon Purchaser's request, and Purchaser reserves the right, in its sole discretion, to disapprove any such proposed subcontractor or supplier. Supplier shall not be relieved of any duty or liability under this Agreement by reason of subcontracting and shall remain responsible to Purchaser for the full performance of the Work.

**B. Purchaser**

This Agreement and any portion hereof shall, at all times, be assignable by Purchaser.

**23. Unemployment Insurance Taxes, Contributions and Assessments**

Supplier is responsible to pay all taxes associated with its employees, contractors and subcontractors, and shall comply with all federal, state and local laws and regulations applicable to compensation paid to its employees.

**24. Waiver of Liens**

Supplier waives, and shall require its subcontractors and suppliers of any tier to waive, any and all liens and claims, and the right to file and enforce or otherwise assert any such liens and claims, against Purchaser or Purchaser's property or facilities for Work done, Services performed, or Materials or Equipment furnished hereunder. Supplier shall include and shall require its subcontractors or suppliers to include this lien waiver provision in all agreements with subcontractors and suppliers.

If any liens or claims are filed or asserted against Purchaser or Purchaser's property or facilities for Services performed or Materials or Equipment furnished by Supplier or its subcontractors and suppliers of any tier in connection with this Agreement, Supplier shall promptly discharge or remove any such lien or claim and shall notify Purchaser promptly when it has done so. If Supplier does not cause such lien or claim to be released or discharged by payment, or if Supplier fails to provide a bond in lieu thereof within thirty (30) days of the filing of such lien or claim, Purchaser shall have the right, but shall not be obligated, to pay all sums necessary to obtain such releases and discharges and to deduct all amounts so paid from any amounts due Supplier.

Prior to making final payment to any subcontractor or supplier, Supplier shall require each and every subcontractor or supplier to execute a Subcontractor's Release and Certificate of Payment, attached hereto and incorporated herein as Exhibit 1. Supplier shall complete and execute a Supplier's Release and Certificate of Payment, attached hereto and incorporated herein as Exhibit 2. Supplier may not receive final payment

hereunder unless Supplier shall have provided to Purchaser: (i) an executed Exhibit 2, and (ii) an executed Exhibit 1 from each and every subcontractor and supplier.

**25. Inspection and Expediting**

Purchaser shall have reasonable access to Supplier's manufacturing, design and other facilities, both on and off-site, as well as the facilities of Supplier's subcontractors and suppliers of any tier, for the purpose of auditing compliance with Supplier's quality control and assurance programs, inspecting the Materials, Equipment and Services, if any, covered by this Agreement and expediting performance of this Agreement.

Authorized inspectors, expeditors or other representatives of Purchaser shall be allowed access to the engineering offices, shops or working areas of Supplier, including those of subcontractors and suppliers of engineered materials, at all reasonable times. Purchaser shall have the right to inspect material during fabrication and prior to release for shipment to the job site to confirm that the specifications are being met. If the specifications itemize certain key steps to be witnessed, performed or verified by Purchaser's inspector, Supplier shall advise Purchaser of its fabrication schedule in sufficient time to allow such inspections to be carried out.

Inspections by Purchaser shall not relieve Supplier of its obligation to comply in all respects with this Agreement. Subcontracts placed for Materials, Equipment and/or Services shall include a provision granting Purchaser similar access to subcontractor's facilities.

**26. Passage of Title and Risk of Loss**

Title to Materials and Equipment furnished by Purchaser shall remain with Purchaser, unless otherwise stated in this Agreement. Title to Materials and Equipment furnished by Supplier during performance of the Work shall pass to Purchaser upon installation.

Unless otherwise specified in this Agreement, any gravel, sand, stone, minerals, timber and all other materials excavated, uncovered, or resulting from the Work, or stored on any land belonging to Purchaser, shall remain solely the property of Purchaser. Subject to prior written approval of Purchaser and mutual agreement on a proper credit against the Compensation, Supplier shall be permitted to use any such materials in the performance of the Work provided they meet the requirements of this Agreement. Any objects excavated or exposed that may have historical significance, or that may be hazardous or raise safety concerns, shall be brought to the attention of Purchaser.

It is expressly understood and agreed that the passage of title shall not be construed by Purchaser or Supplier as a release from either's responsibility to fully carry out its obligations under this Agreement.

Except as otherwise expressly provided, Supplier shall retain risk of loss or damage to the Materials and Equipment being installed or repaired, whether such Materials and Equipment are furnished by Purchaser or Supplier, until Acceptance of all Work.

Prior to Acceptance, Supplier shall be responsible for, and shall bear any and all risk of loss, destruction or damage, to any and all property used in performance of the Work, whether or not such property is owned by either party hereto. Purchaser shall not be responsible for any loss or destruction of or damage to property of Supplier resulting from the fault or negligence of Supplier or its employees. Supplier shall look to its subcontractors, if any are responsible, for relief from the loss, destruction or damage and for any cost of repairing, making good, or replacing any and all such property. Supplier shall be solely responsible for taking all precautions necessary to protect property from any loss, destruction or damage.

Supplier shall be responsible for taking precautions to prevent loss, destruction or damage to the property of Purchaser or other contractors and suppliers. Supplier shall be liable for any and all loss, destruction and damage caused by its agents, employees, subcontractors or assigns to the property of Purchaser or any other contractors and suppliers, and Supplier shall pay to any such damaged party any and all damages resulting therefrom.

**27. Safety**

Prior to beginning Work hereunder, Supplier shall have established policies and procedures which meet or exceed the requirements of all applicable federal, state and local laws, regulations, rules, orders, ordinances, and accepted industry practices, relating to health and safety in the field of the Services to be provided, and Supplier shall have trained all of Supplier's employees, sub-contractors and agents who shall perform the Services to abide by same. During the performance of the Work, Supplier shall comply with its own policies and procedures, and with federal, state and local law, regulation, rule, order, ordinance, and accepted industry practice relating to health and safety in the field of the Services and Work performed hereunder. Supplier shall take all reasonable precautions to promote safety and shall provide all reasonable protections to prevent damage, injury or loss to: (i) all persons employed by or under contract to Supplier in connection with the Work hereunder and all other persons who may be affected thereby, (ii) all Materials and Equipment to be incorporated into the Work under the care, custody or control of Supplier or its suppliers, and (iii) all other property at the project site in the course of performance of the Work. Additionally, Supplier shall be responsible for providing its employees, sub-contractors and agents, and suppliers working on the project site with all safety equipment, including without limitation, hardhats, protective eyewear, earplugs, respirators, work gloves and all other necessary protective and medical equipment.

**28. Supplier Materials, Tools, Equipment and Facilities**

Supplier shall supply all materials, tools, equipment and facilities that may be necessary for the proper performance of the Work.

If Purchaser permits Supplier to use any of Purchaser's materials, equipment, tools or facilities or if Purchaser provides transportation, labor, electric power or other utility

service or other assistance in connection with the performance of the Work, such use or furnishings, unless expressly provided otherwise, shall be gratuitous and Supplier hereby waives, releases and renounces all claims, damages or losses relating thereto, whether for personal injury, occupational sickness, disease or death or for physical damage to and loss of use thereof, and whether based on the condition thereof or any negligence, strict liability or other fault of Purchaser. Supplier shall store its tools and materials at locations permitted by Purchaser, but Purchaser shall not assume any liability or responsibility for loss or damage in connection therewith.

**29. Miscellaneous**

**A. Governing Law; Jurisdiction**

This Agreement shall be governed by the laws of the Commonwealth of Virginia, without giving effect to the choice of laws principles thereof, and is deemed to have been executed, entered into and performed within Richmond, Virginia. The parties hereby irrevocably submit to jurisdiction in the Commonwealth of Virginia, and venue shall lie in the Circuit Court for the County of Chesterfield or the United States District Court for the Eastern District of Virginia, Richmond Division. The parties hereby waive any objection to such jurisdiction and venue.

**B. Non-Waiver of Rights**

The failure of Purchaser to demand strict performance of the terms of, or to exercise any right conferred in, this Agreement shall not be construed as a waiver or relinquishment of its right to assert or rely upon any such term or right in the future, or a consent to any continuing or subsequent failure or breach.

**C. Severability**

In the event any provision, or any part or portion of any provision of the Agreement shall become or be declared unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the parties shall be reduced only as much as is required to remove the unenforceability. The balance of this Agreement shall remain of full force and effect.

**D. Survival**

Neither completion of the Work nor any termination or cancellation of this Agreement shall be deemed to relieve Supplier of any obligations hereunder that by their nature survive completion of the Work, including but not limited to all warranties, guarantees, promises of indemnity, and confidentiality obligations.

**E. Headings**

Article and paragraph headings contained herein are inserted for convenience and shall have no effect on interpretation or construction of this Agreement.

**F. Publicity**

No information relative to this Agreement or the Work shall be released by Supplier for publication, advertising or for any other purpose without the prior written approval of Purchaser.

G. Independent Contractor

Supplier's status is that of independent contractor, and neither Supplier nor any employees of Supplier are employees of Purchaser. Supplier assumes sole and complete responsibility for the employment, control and conduct of its employees. This Agreement does not create a partnership or joint venture between the parties.

H. Affiliate Pricing

If any part of this Agreement, now or in the future, involves cost-plus pricing, Supplier warrants and represents that it has disclosed to Purchaser, or will disclose to Purchaser during the term of this Agreement, the names and addresses of all of its affiliates from whom it has purchased services, materials or supplies in connection with any cost-plus portion of this Agreement. Supplier also warrants and represents that it shall: (i) provide Purchaser with a schedule of such expected or planned purchasing transactions between Supplier and any of its affiliates relating to any cost-plus portion of this Agreement, and (ii) pay for services, materials or supplies provided by its affiliates in connection with any cost-plus portion of this Agreement at prices that are no higher than the market or general prices paid by the affiliate's direct customers. As used in this Agreement, business concerns are "affiliates" when, either directly or indirectly, one concern controls or has the power to control the other or a third party controls or has the power to control both.

I. Successors and Assigns

This Agreement shall be binding on the parties hereto and their directors, officers, employees, agents, successors and assigns.

J. Notices

Notices to the parties concerning this Agreement shall be effective only when in writing and delivered personally, or mailed certified, return receipt requested, postage prepaid via U.S. Mail or overnight courier to the authorized representative or corporate officer of the other party. The date of receipt shall be the effective date of such notice. When speed is essential, written notice shall be preceded by other appropriate communication.

K. Cooperation With Others

Purchaser reserves the right to require Supplier to schedule the order of performance of its obligations under this Agreement in such a manner as will minimize interference with performance by other parties at the job site.

L. Opt Out of Convention

The terms of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

30. **Entirety**

This Agreement, together with all attachments and incorporated references, is the entire agreement between Purchaser and Supplier with respect to the Work and supersedes any prior or contemporaneous agreement or understanding between the parties regarding the subject matter hereof. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth or provided for herein. No prior course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition or instruction used in this Agreement, nor shall same be deemed to effect any amendment hereto.

**31. Conditions Affecting Work**

Supplier acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including but not limited to those bearing upon: (i) the transportation, disposal, handling and storage of wastes and Materials, (ii) the availability of labor, utilities, and forms of transportation, including roads, (iii) the uncertainties of weather, river stages, tides or similar physical conditions as pertains to the Work, (iv) the conformation and condition of the ground, (v) the character of the equipment and facilities needed preliminary to and during performance of the Work, and (vi) the character, quality and quantity of surface and subsurface materials or obstacles to be encountered. Any failure by Supplier to acquaint itself with the available information shall not relieve it from responsibility for properly estimating the difficulty or cost of successfully performing the Work. Purchaser assumes no responsibility for any conclusions or interpretations made by Supplier on the basis of the information made available by Purchaser, other than information contained in or referenced in this Agreement.

**32. Differing Site Conditions**

Supplier shall promptly, and before conditions are disturbed, notify Purchaser in writing of subsurface or latent physical conditions at the site differing materially from those indicated in this Agreement or unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement. Purchaser shall promptly investigate the conditions, and if it finds that such conditions do materially so differ and cause an increase or decrease in Supplier's cost of, or time required for, performance of the Work as affected by any such conditions, an equitable adjustment shall be made in the Compensation, Performance Schedule, or both. No claim for equitable adjustment by Supplier hereunder shall be considered unless Supplier has given timely notice, pursuant to the Article entitled Changes.

**33. Cleaning Up**

Supplier shall, at all times, keep its work area, including storage areas, free from wastes or rubbish. Prior to Acceptance of all Work, Supplier shall remove wastes and rubbish, together with all tools, scaffolding, equipment and materials that are not the property of Purchaser. Upon Acceptance of all Work, Supplier shall leave the premises in a clean, neat and workmanlike condition satisfactory to Purchaser.

**34. Payment of Labor, Supplies and Materials**

Supplier shall apply all payments made by Purchaser first to the payment of its subcontractors, laborers and suppliers. Supplier shall so apply the payments from Purchaser before using any part thereof for any other purpose. Supplier's failure to do so shall not transfer any responsibility to Purchaser for applying such payments.

Supplier shall, as often as requested by Purchaser, furnish an affidavit showing the names and addresses of all persons or firms who have furnished labor, supplies or materials for the performance of the Work and the amount due or to become due to each person or firm. Payments may, in the discretion of Purchaser, be made in the form of checks payable jointly to Supplier and subcontractors or suppliers. If Supplier fails to pay promptly, when due, amounts for all labor, supplies and materials furnished in connection with the performance of the Work, Purchaser may, upon five days written notice to Supplier, pay the amount of such liabilities and recover the amount thereof from Supplier directly or by set-off against any portion of the Compensation due or becoming due to Supplier hereunder.

## SUBCONTRACTOR'S RELEASE AND CERTIFICATE OF PAYMENT

With reference to the Contract between \_\_\_\_\_  
("Contractor") and \_\_\_\_\_ ("Subcontractor"), dated \_\_\_\_  
\_\_\_\_\_, 20\_\_, as amended, (the "Contract") for work done by Subcontractor as a  
supplier to Contractor under Purchase Order No. \_\_\_\_\_, between Contractor and Virginia  
Electric and Power Company (the "Agreement"), Subcontractor hereby certifies that, except for  
final payment now due in the amount specified below, Subcontractor has been paid in full for all  
work done, services performed, and materials and equipment furnished in connection with its  
work under the Contract.

Subcontractor further certifies that it has made full payment to each of its subcontractors and  
materialmen for all work done, services performed, and materials and equipment furnished in  
connection with Subcontractor's work under the Contract.

Subject to payment by Contractor of \$ \_\_\_\_\_ as full and final payment under the  
Contract, Subcontractor hereby unconditionally releases and forever discharges Contractor and  
Virginia Electric and Power Company and the officers, director, employees and agents of both  
of them from and against all claims and liens arising out of or connected with Subcontractor's  
work under the Contract.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Subcontractor)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

## SUPPLIER'S RELEASE AND CERTIFICATE OF PAYMENT

With reference to Purchase Order No. \_\_\_\_\_, effective as of \_\_\_\_\_, 20\_\_\_\_, as amended, between Supplier and Purchaser (the "Agreement"), Supplier hereby certifies that it has made full payment of all costs, charges, expenses, taxes and assessments incurred by it or on its behalf for Work, Services, Materials and Equipment supplied at the premises or any other locations and used in connection with its Work under the Agreement.

Supplier further certifies that to the best of its knowledge and belief, each of its subcontractors and materialmen has made full payment of all costs, charges, expenses, taxes and assessments incurred by them or on their behalf or Work, Services, Materials and Equipment supplied to the premises and used by them in connection with Supplier's Work under the Agreement.

Subject to payment by Company of \$ \_\_\_\_\_ as full and final payment under the Agreement, Supplier hereby unconditionally remises, releases and forever discharges Purchaser and its property and premises from all claims, liens and obligations of every nature arising out of or connected with the performance of said Agreement and all amendments thereto.

As additional consideration for the final payment, Supplier agrees to indemnify and save harmless Purchaser from and against all costs, losses, damages, claims, causes of action, judgments and expenses, including attorney's fees, arising out of or connected with claims against Purchaser, which claims arise out of the performance of the Work under the Agreement and which may be asserted by Supplier, or any of Supplier's employees, suppliers, subcontractors or any of their representatives, officers, agents or employees.

The foregoing shall not relieve Supplier of any obligations under the Agreement that by their nature survive completion of the Work, including but not limited to all warranties, guarantees and promises of indemnity. The capitalized terms herein shall have the same meaning as ascribed in the Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Supplier)

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

## **Supplemental Terms and Conditions On-Site Services, Non-Nuclear – 10/1/2001**

### **1. Timesheets**

If requested by Purchaser, Supplier shall complete timesheets on forms furnished by Purchaser. Such timesheets shall be prepared utilizing appropriate Purchaser skill codes, if provided, and be submitted to Purchaser's representative on a daily basis for review and verification. Copies of such verified timesheets shall accompany Supplier invoices for the applicable invoice period.

### **2. Vehicle Access**

Site access for vehicles, machinery, and equipment is limited to those required to perform the Work. Privately owned and Supplier owned vehicles not directly involved in the Work shall be parked in the designated parking area only. Access to Purchaser property shall be as designated by Purchaser's representative. Purchaser vehicle passes may be required for Supplier vehicle access to Purchaser's controlled areas. The pass shall be prominently displayed at all times. Supplier personnel shall not enter any Purchaser controlled area, unless in the performance of the Work, without approval by Purchaser.

### **3. Personnel Access**

In the interest of safety or security, Purchaser may, in its sole discretion and without notice or cause, exclude or expel any employee of Supplier or its subcontractors from Purchaser property.

### **4. Security**

#### **A. General Policy**

Purchaser shall supply such security as it deems necessary and may specify to Supplier such additional security precautions and procedures at the site as in Purchaser's opinion are necessary for the safety and security of Purchaser's and Supplier's personnel and property. Purchaser will not provide personal policing of Supplier's materials and equipment.

Purchaser prohibits the unauthorized or illegal use, possession or sale of alcoholic beverages, drugs or other intoxicants on Purchaser's property or job assignments. No employee of Supplier or any of its subcontractors shall be permitted to bring unauthorized or illegal alcoholic beverages, drugs or other intoxicants ("Banned Substances") onto any location where work is being performed for Purchaser; nor shall any such employee be allowed to perform work under the Order while under the influence of Banned Substances. The abuse of prescription or non-prescription drugs that adversely affects one's ability to perform his duties is prohibited. Purchaser reserves the right to prohibit any person violating this policy from performing work under the Order and to exclude any such person

from property owned or controlled by Purchaser. Company may notify law enforcement authorities of any suspected criminal violation concerning possession and use of Banned Substances. Supplier shall require its employees, subcontractors and subcontractors' employees performing work under the Order to comply with the foregoing policy.

**B. Duty to Assist**

Supplier shall assist Purchaser in carrying out all security measures and in reporting all information or knowledge of matters adversely affecting security to Purchaser's representative.

**C. Searches**

Purchaser may search any persons and personal possessions brought onto Purchaser's property. Such searches may be scheduled or unannounced and may include all site areas, including, but not limited to, lockers, desks, lunchboxes, packages and motor vehicles (regardless of ownership) located on Purchaser's property or facilities. The results of such searches may be reported to the person's employer and to public authorities, if appropriate.

Any items discovered which in Purchaser's opinion appear to be improperly possessed may be seized until proper possession is determined. Supplier shall encourage employees not to bring unnecessary personal property onto the site.

**D. Release of Records**

Purchaser, alone or in cooperation with law enforcement officials, may conduct background or other investigations of Supplier's and its subcontractors' employees. Supplier shall cooperate in such investigations and shall require any such employee to authorize appropriate agencies to release his criminal record to Purchaser as a condition of permission for access to Purchaser's property.

**E. Duty to Publicize**

Supplier shall ensure that all of its employees, subcontractors, and visitors are informed of and comply with Purchaser's security policies, and to obtain consent from its employees and subcontractors to cooperate in all applicable security measures including searches. Supplier agrees to have its employees, subcontractors, and visitors acknowledge receipt of a copy of Purchaser's Security Rules and Regulations if required.

**F. Subcontractors**

Supplier shall incorporate and shall require its subcontractors to incorporate Purchaser's security policies in all subcontracts.

**5. Identification Badges**

Purchaser may issue identification badges to Supplier's and its subcontractor's employees as necessary for access to Purchaser property or facilities.

At the completion of the Work, or upon termination of an employee's services in connection with the Work, Supplier shall return all such badges to Purchaser's representative or his designee.

**6. Scheduling Of Work**

Supplier shall obtain approval of its proposed work schedule of shifts per day, hours per shift, and number of days per week.

A Purchaser representative shall be on site while Supplier is performing work on Purchaser's property. Purchaser shall authorize any work to be performed out-of-shift, on holidays, or weekends.

**7. Coordination Of Work**

Purchaser reserves the right to coordinate the performance of the Work with the work of others. Supplier shall cooperate with and shall not delay, impede or otherwise impair the work of others. Purchaser does not guarantee Supplier continuous, uninterrupted work or access to the site, but shall provide such access as conditions allow.

**8. Responsibility For Work/Precautions**

Supplier shall be responsible for, and shall bear any and all risk of loss or damage to, the Work and to materials, tools and equipment used in the performance of the Work, unless such loss or damage results from the sole negligence of Purchaser. Purchaser shall not be responsible for any loss of or damage to the Work, materials, tools and equipment of Supplier resulting from the fault or negligence of other suppliers or their employees. Supplier shall be solely responsible for taking all precautions necessary to protect the Work, materials, tools and equipment from any loss or damage.

Supplier shall be responsible for taking precautions to prevent damage or injury to the property, facilities or work of Purchaser or other suppliers. Supplier shall be liable for any and all damage or injury caused by its agents, employees, subcontractors or assigns to the property, facilities or work of Purchaser or any other supplier; and Supplier shall pay to any such damaged or injured party any and all damages resulting therefrom.

**9. Fitness For Duty**

Purchaser has implemented a Fitness for Duty Program for its employees and suppliers. The goal of the program is to achieve a drug-free work place. Purchaser may require chemical testing of the blood, breath or urine of Supplier personnel providing services at Purchaser sites under the following conditions:

- A. After observed behavioral impairment
- B. After on-site accidents involving a failure in individual performance resulting in:

- (1) a fatality
- (2) personal injury when off-site medical treatment is received
- (3) property damage
- (4) actual or potential degradation of safety

C. After a driver controllable vehicle accident on Company property or involving a Company-owned or leased vehicle

D. After receipt of credible information

Upon occurrence of any of the above conditions, Supplier shall cooperate fully and ensure that its supervisors and employees cooperate fully in having the involved personnel chemically tested using Purchaser's Fitness for Duty Drug and Alcohol Kit at Purchaser-approved and designated testing locations.

Testing for drugs other than alcohol shall be by urinalysis, using established standards. Laboratories used will be certified by the U. S. Department of Health and Human Services. All tests shall be confirmed according to established standards. Testing for alcohol will be by breath or blood analysis.

Any Supplier employee refusing to provide a specimen for chemical testing or refusing in any way to cooperate in the chemical testing program shall be denied access to Purchaser's property.

## 10. Safety

Prior to beginning Work hereunder, Supplier shall have established policies and procedures which meet or exceed the requirements of all applicable federal, state and local laws, regulations, rules, orders, ordinances, and accepted industry practices, relating to health and safety in the field of the Services to be provided, and Supplier shall have trained all of Supplier's employees, sub-contractors and agents who shall perform the Services to abide by same. During the performance of the Work, Supplier shall comply with its own policies and procedures, and with federal, state and local law, regulation, rule, order, ordinance, and accepted industry practice relating to health and safety in the field of the Services and Work performed hereunder. Supplier shall take all reasonable precautions to promote safety and shall provide all reasonable protections to prevent damage, injury or loss to: (i) all persons employed by or under contract to Supplier in connection with the Work hereunder and all other persons who may be affected thereby, (ii) all Materials and Equipment to be incorporated into the Work under the care, custody or control of Supplier or its suppliers, and (iii) all other property at the project site in the course of performance of the Work. Additionally, Supplier shall be responsible for providing its employees, sub-contractors and agents, and suppliers working on the project site with all safety equipment, including without limitation, hardhats, protective eyewear, earplugs, respirators, work gloves and all other necessary protective and medical equipment."

**11. Hazardous Chemicals**

**PURCHASER'S WORKSITE MAY CONTAIN HAZARDOUS CHEMICALS IN USE OR STORAGE WHICH ARE SUBJECT TO THE REQUIREMENTS OF 29 C.F.R. §1910.1200 ("the Regulations").**

- A. Prior to commencing work, Supplier shall contact Purchaser's site Chemical Management Coordinator or substitute designated by Purchaser to arrange for access to the appropriate Material Safety Data Sheets ("MSDS"), information concerning precautionary protective measures required as a result of the worksite's normal operating conditions and in foreseeable emergencies, and information concerning the labeling system used at the worksite. Prior to commencing work, all of Supplier's employees (including subcontractors) who will be performing work at Purchaser's worksite shall complete a hazardous chemical training program which shall comply with the Regulations. Supplier shall certify each employee's completion of such training by completing the Certificate of Hazard Communication Training form (Exhibit 1) and submitting it to Purchaser's Site Chemical Management Coordinator. Such training shall be a prerequisite for admittance to the worksite.
- B. If the work pursuant to the Order is performed utilizing materials furnished by Supplier, Supplier shall comply with the Regulations. Supplier shall furnish Purchaser with a list of all chemical products to be used. The list shall include product name, manufacturer's name and address, and estimated quantity to be used. Supplier shall ensure, at all times hazardous chemicals are produced, used or stored by it at Purchaser's worksite, that all appropriate MSDS's are readily accessible during each workshift to all employees who may be exposed to such hazardous chemicals. Supplier shall also comply with the hazard warning label requirements set forth in the Regulations.
- C. Supplier shall maintain written records demonstrating its compliance with 29 C.F.R. § 1910.1200, "Hazard Communication." Such records shall include a list of all chemical products supplied, used, produced or stored in connection with the Order; a written hazard communication program; the location of all applicable MSDS's and records of employee hazardous chemical training. Such records shall be available for Purchaser's inspection.
- D. In the event that performance of the Work generates hazardous waste, Supplier shall provide Purchaser's site Environmental Compliance Coordinator or substitute designated by Purchaser with a written description of the nature of the hazardous waste, the means and methods of proposed transportation, and the name and location of the ultimate disposal facility to be used.

**12. Respiratory Protection Requirements**

Supplier shall comply with Article 10 (Safety) and all Federal, state and local laws, rules, regulations and ordinances relating to respiratory protection. Supplier shall be responsible for determining those areas requiring respiratory protection. Supplier shall supply and maintain such respiratory protection and testing equipment necessary to support the Work. Some areas of Purchaser's property or facilities may be designated as requiring respiratory protection, and Supplier shall take such precautions as are required. Purchaser may, at its option, conduct periodic audits of Supplier's respiratory protection program.

**13. Emission Of Pollutants**

Supplier shall not, under any circumstances, cause or permit, in connection with the Work, the discharge, emission or release of any pollutant, contaminant or other substance in violation of any applicable laws, rules, regulations or ordinances which are now or may hereafter be promulgated by Federal, state or local authorities.

**14. Asbestos**

Supplier may be performing work in areas where asbestos is present. Supplier shall comply with Article 10 and all applicable Federal, state and local laws, regulations, ordinances or standards relating to asbestos, whether or not such laws, regulations, ordinances or standards are specifically referred to in the Order.

**15. Cleaning Up**

Supplier shall at all times keep its work area, including storage areas, free from accumulations of waste material or rubbish, and prior to completion of the Work, shall remove any rubbish or waste material from the premises and all tools, scaffolding, equipment and materials that are not the property of Purchaser. Upon completion of the Work, Supplier shall leave the Work and premises in a clean, neat and workmanlike condition satisfactory to Purchaser.

# Appendix A

## 1. General

- (a) During performance of Work, Supplier shall comply with all safety requirements of Federal, State and local laws, regulations and ordinances and information outlined in this document.
- (b) The Company Representatives shall have full access to Supplier's on-site facilities.
- (c) Supplier shall develop a process to track and trend safety performance during all phases of work. This includes but not limited to first aid/OSHA recordable cases, near misses, property damage, safety violations and, site safety inspection data. Supplier shall review the finding with the Company upon request. Supplier shall implement controls to correct or rectify safety deficiencies or near misses.
- (d) Supplier shall be responsible for and ensure all subcontractors/vendors utilized to conduct work at Company facilities follow the requirements of this document and other terms and conditions of the Order that apply to subcontractors.
- (e) Supplier shall notify the Company immediately of any safety or health hazards discovered by Supplier's personnel or subcontractors/vendors prior to or during progress of Work.
- (f) Suppliers shall not allow or utilize personnel under the age of 18 years old for any Work conducted at Company's Fossil or Hydro locations.
- (g) Supplier shall obtain permission from the Company prior to modifying, adjusting, starting, stopping, testing, operating, or isolating company controlled equipment or systems.
- (h) Suppliers who use non-English speaking work force shall supply an interpreter of that language for each crew at a minimum ratio of 1:7. Interpreter shall be immediately available to the non-English speaking work force at all times in all locations.
- (i) Company's Safety Representative shall have access to and be permitted to review Supplier's safety and health programs.
- (j) Supplier shall ensure that its employees and subcontractors are familiar with sites emergency alarms and emergency procedures.
- (k) Supplier shall make the Company aware of, and provide copies of any temporary variance or permanent safety variance received from Federal or State regulatory agencies.
- (l) Supplier is required by the third working day of each month to provide the Company the number of hours it's employees and subcontractor employees worked during the previous month.
- (m) Supplier shall incorporate a means of accounting for employees entering & exiting the property and accounting for all employees at the end of their work shift and have a process to account for employees in the event of an emergency evacuation.

- (n) Supplier shall immediately notify company of regulatory visits or requests involving safety or health compliance issues.
- (o) Supplier shall formally inform the Company of corrective actions taken to eliminate or control hazards identified by company representatives or regulatory agencies.

## **2. Safety Orientation / Safety Review**

- (a) Supplier shall conduct or coordinate with the company for a site specific safety orientation for all employees & subcontractor employees prior to commencing Work. Orientation shall cover safe work practices, emergency response procedures and the applicable parts of this document that apply to the scope of work.
- (b) All Supplier employees or subcontractor employees completing the safety orientation will be issued a hard hat decal, which specifies the date of orientation.
- (c) Supplier shall conduct a review of this document with all suppliers' site management /supervision including subcontractor management/supervision prior to commencing Work. Supplier shall maintain documentation of the review.
- (d) Supplier shall open all progress meeting held with the Company with a status review of recent safety performance and activities. Subcontractor safety performance and activities are to be included.

## **3. Pre-Job (Safety) Briefings**

- (a) Documented Pre-job briefings are required for each shift and each crew before commencing Work. Briefing shall cover as a minimum the following items: hazards associated with the task, safe work procedures, special precautions, energy source control (LO/TO) and personal protective equipment requirements.
- (b) Follow up briefings shall be conducted immediately due to work scope changes associated with the task or due to an injury, near miss, or property damage.
- (c) All employees involved in the task need to attend the pre-job briefing; employees who are added after the task has started need to be briefed prior to commencing work.
- (d) Additional briefings will be necessary when a new task is started.

## **4. Accident/Incident & Near Miss Reporting**

- (a) Report all Supplier accident/incidents resulting in injuries that require treatment by a physician or damage to Company property to the F/H employee coordinating the supplier work or the on-site safety representative before the end of the shift that they occurred.

- (b) IMMEDIATELY report any injury/illness resulting in lost time, hospitalization or fatality to the company safety representative or site coordinator.
- (c) IMMEDIATELY report property damage that results in the shut down of equipment, spillage of fluids, chemicals, oil, etc. or a fire to the on site control center. All property damage shall be reported to the Company before the end of the shift that they occurred.
- (d) Report all injuries and property damage using the Company's Accident/Incident Report and submit to F/H employee coordinating Supplier's work within 3 days of the event.
- (e) Supplier shall report all near-miss incident before the end of the shift that they occurred to the company. Supplier shall implement a corrective action plan to prevent the reoccurrence of near-miss incidents.
- (f) Supplier shall formally inform the Company with in 24 hours what corrective actions were implemented to prevent the reoccurrence of accident/incidents or near misses, as well as disciplinary actions for safety violations.

## **5. Safety Inspections**

- (a) Supplier shall perform daily work area inspections to ensure a safe work environment.
- (b) Supplier shall maintain a copy of the current annual and monthly inspection of cranes. Documentation of these inspections shall be kept at the work site or with the crane, and shall be available to Company. In states, or jurisdictions requiring crane operators to have a Certified Crane Operator License a copy shall be kept on file at the job site.
- (c) Modification or repair of equipment and tools shall be in accordance with the Original Manufactures Specifications.
- (d) Equipment and tools shall be inspected, maintained, and operated according to manufacture specifications and recommendations.
- (e) Prior to use or shift for scaffolding – documented
- (f) Daily or prior to use for cranes – documented
- (g) Daily or prior to use for fork lifts – documented
- (h) Daily or prior to use for man lifts – documented
- (i) Daily or prior to use for scissors lifts - documented

## **6. Injury Illness Control/Personal Protective Equipment**

- (a) Before the onset of work the supplier shall perform a Personal Protective Equipment assessment for common construction activities.
- (b) Supplier shall implement necessary administrative or engineering controls to prevent injury and illness. Supplier shall use personal protective equipment to provide additional protection where administrative and engineering controls are not sufficient or not feasible.

- (c) Company requires the 100% use of the following personal protective equipment in all work areas.
- 100% eye protection (Z87, ANSI), face shields with safety glasses are required when cutting, grinding, power washing, or cleaning with pneumatic air.
  - 100% foot protection (Z-41, ANSI)
  - 100% head protection (Z-89.2, ANSI) Hardhats shall be worn forward at all times while performing work.
  - Proper gloves will be worn for material handling applications.
  - Dress Code requires long pants and shirts with a minimum of short sleeves. The wearing of tank tops, sleeveless shirts, shirts showing the navel or shorts are not permitted. Clothes should be suitable for the work and weather conditions. No profanity is allowed on clothing.

**7. First Aid**

- (a) Supplier shall ensure sufficient first aid coverage and supplies for the number of employees and the type of tasks its employees are performing during all shifts while performing Work at Company facilities, including personnel certified to perform basic first aid and cardiopulmonary resuscitation (CPR) efforts.

**8. Rescue Contingency Plans**

- (a) Written rescue contingency plans are required for jobs that pose a greater than normal safety risk; i.e. stack repairs, permit confined space work, and excavation and trenching, steel erection, etc.
- (b) Supplier plans shall be written and discussed with Company prior to commencement of Work.

**9. Tagging (Energy Source Control)**

- (a) Supplier shall coordinate with the company any activities associated with the energizing, de-energizing, addition or deletion of company's equipment & systems.
- (b) Supplier shall adhere to the appropriate sections of the Company Tagging and Grounding Procedure when working on company controlled electrical or mechanical systems.
- (c) Supplier shall not remove tags, start or operate any Company tagged systems or equipment. All testing, adjusting of tagged equipment or systems shall be coordinated with the Company.
- (d) Supplier shall develop an energy source control process to protect their employees from electrical & mechanical sources during all phases of the project. The process shall include a means to identify/account/notify all

employees covered by the isolation prior to releasing clearance on equipment or systems.

- (e) Supplier and the Company shall implement a joint tagging process during the testing and integrating of new or reconfigured equipment and systems where both supplier and company employees are exposed to energy sources. All equipment and systems shall be tagged according to Company procedures after operational acceptance.

## **10. Permits**

- (a) Welding and flame permits are required whenever Supplier Work produces a flame or spark from welding, cutting, grinding, or heating operations.
- (b) Supplier shall provide permits for confined space entry.
- (c) Drilling Digging and Cutting Permit are required for operations involving breaching or penetrating the surface of any existing structures or ground surface.
- (d) Supplier shall supply a Diving Permit/Plan for any diving activity.
- (e) Supplier shall supply a Rigging Permit/ Plan for any lifting activity exceeding 10 tons, or when lifts are accomplished with multiple cranes, or the lift is complex or presents increased exposure for potential injury or damage to existing equipment.

## **11. Stack Work**

- (a) Supplier shall meet with the Company prior to performing Work/Inspections on the stack to discuss and review the applicable safety requirements and precautions based on risks associated with the scope of the task(s) being performed.

The applicable safety requirements can include:

Fitness for Duty Testing 48 hours prior to supplier employees performing stack work.

Air monitoring for flue gas based on exposure from adjacent stacks or ductwork

Rescue contingency plan

Secondary access and egress to and from work areas

Communication plan and equipment

Adverse weather warning process

Personal protective equipment requirements

Customized scaffolding/platform design and inspection

First aid training

Access control

Fall protection plan

## **12. Diving**

- (a) Supplier shall review the pre-dive hazard assessment and the diving permit with the Company prior to commencing any work. The hazard assessment and the diving permit shall be discussed at pre-job briefings.
- (b) Supplier shall have a minimum of three (3) employees at the dive location, consisting of a diver, a tender and a designated person in charge (back up diver).
- (c) Gas powered compressors used for breathing air shall be continuously monitored for carbon monoxide. An audible alarm shall alert the dive team of excessive CO. Calibration of monitoring equipment shall be per manufacturer recommendations.
- (d) Supplier shall coordinate each dive with the Company to ensure the area has been prepared and cleared for the diving operation.

## **13. Personnel Exposed to 50 Volts and Above**

Supplier shall require their employees and their subcontractors who are exposed to 50 volts or above to wear 100% natural fiber or flame resistant or flame retardant clothing.

## **14. Ground Assurance Program (Electrical)**

- When Supplier's work requires the use of electric tools or equipment, they shall be protected with a Ground Fault Circuit Interrupter Protection at the base of the power supply.

## **15. Training/Certification Requirements**

(a) Supplier personnel shall be trained in the recognition and avoidance of unsafe conditions/behaviors and the safety and health training/certifications applicable to the work being performed. Documentation supporting such safety and health training shall be available to the company upon request.

(b) Suppliers' site management and supervisors shall have completed the OSHA 10-hour construction industry outreach course in the last 36 months. This item does not apply to suppliers providing incidental services or repairs.

## **16. Safe Work Area Preparation**

Supplier shall maintain a safe work area at all times while performing Work on Company facilities, including but not limited to the following:

- (a) Place needed warning signs and adequate barricades
- (b) Strategically place fire extinguishers

- (c) Notify employees of first aid/eyewash/shower stations
- (d) Survey area for excessive noise from Supplier equipment
- (e) Require hearing protection and signage as appropriate

## 17. Scaffolding

- (a) Supplier shall designate a competent person to oversee & inspect all scaffolding and provide documentation of their qualifications upon request.
- (b) Scaffolding shall be inspected at a minimum prior to each shift. Proof of inspection shall be documented at the access point of the scaffolding.
- (c) Supplier shall designate a qualified person to design and oversee the installation and use of custom scaffolding. Documentation shall be maintained at the site for all custom scaffolding.
- (d) Supplier shall utilize a tagging system to identify the current status of the scaffolding during all phases of erection, use, and disassemble. Tags shall be placed at all entrance points to the scaffolding signed (not initialed) prior to each shift and shall have the date, time, as well as alert the user to any hazards and limitations associated with the scaffolding. Scaffolding tag shall post the maximum intended load that the scaffolding is designed to support.
- (e) Supplier shall implement a process to ensure 100% fall protection when working on, assembling, and disassembling scaffolding, workers are not to be exposed to fall hazards greater than 6 feet.
- (f) Supplier shall implement a process to prevent scaffolding components from falling during the assembly and disassembly of scaffolding.
- (g) Scaffold erectors using hand tools shall utilize a tether to prevent the tools from falling.
- (h) Scaffolding shall have handrails installed when the opening between the edge of the walking working surface and any adjacent structure exceeds fourteen (14) inches (ex. Boiler walls, tank scaffolding, etc.). The walking working service shall be a minimum width of thirty-six (36) inches and shall be tight with no space which tools or fragments of material can fall; no opening shall exceed one (1) inch in the walking working surface. Toe boards shall be installed on all exposed sides of the walking working platform.

## 18. Confined Space

- (a) The Company prohibits hazardous confined space entry by other than qualified rescue personnel.
- (b) Supplier shall issue a written evaluation/permit prior to entry into confined space areas.
- (c) Initial and continuous atmospheric monitoring is required while personnel are in confined space areas.
- (d) Confined space instrumentation shall be calibrated/bump tested in accordance with manufacturer recommendations. Supplier shall maintain

copies of calibration records; documentation shall be available to Company upon request.

- (e) Confined space instrumentation is to be provided by the supplier.

## **19. Respiratory Protection**

- (a) Supplier shall require the use of correct respirators and cartridges/filters after becoming aware of specific respiratory hazards.
- (b) Supplier shall have available for inspection, training, fit test and medical certification of all employees who, during the course of Work, may need to wear a respirator.

## **20. Fitness for Duty**

Company has a Fitness for Duty program. The goal of the program is to achieve a drug-free environment. Company may require chemical testing of the blood; breath or urine of Supplier personnel providing services at Company sites under any of the following conditions:

- A. After observed behavioral impairment
- B. After on-site accidents involving a failure in individual performance resulting in:
  - 1. A fatality
  - 2. Personal injury when off-site medical treatment is received
  - 3. Property damage
  - 4. Actual or potential degradation of safety
- C. After a driver controllable vehicle accident on Company property or involving a company owned or leased vehicle.
- D. After receipt of credible information.

Upon occurrence of any of the above conditions, Supplier shall cooperate fully and ensure that its supervisors and employees cooperate fully in having the involved personnel chemically tested using Company's Fitness for Duty Drug and Alcohol process.

Testing for drugs other than alcohol shall be by urinalysis, using established standards. Laboratories used shall be certified by the U.S. Department of Health and Human Services. All tests shall be confirmed according to established standards. Testing for alcohol shall be by breath or blood analysis.

Any Supplier employee refusing to provide a specimen for chemical testing or refusing in any way to cooperate in the chemical testing program shall be denied access to Company property.

Company may require the Supplier to implement additional measures (pre employment testing and random site testing) to ensure a drug free work environment due to the complexity associated with the task, or based on previous testing results, or review of credible information.

Supplier may use their Fitness for Duty Process in lieu of company's process if it meets or exceeds the company's requirements. Supplier shall submit their program to the Company for review. Supplier shall share the test results with the Company on For Cause Testing.

**21. Competent Safety Personnel**

- (a) Supplier shall have an on site full time competent safety person during all shifts when staffing exceeds 25 employees or the task is complex or presents a higher exposure for serious injury/illness. Additional safety personnel will be provided as needed.
- (b) Supplier's subcontractors shall have an on site full time competent safety person when subcontractors staffing exceeds 25 or the task is complex or presents a higher exposure for serious injury/illness.
- (c) A competent safety person is defined as "One with a degree in safety or related technical field with two years of experience or a minimum of 5 years experience in construction safety and completed the OSHA 500 Training Course."

**22. Consequences for Safety Regulation Infractions/Failure to Correct Unsafe Conditions**

- (a) Discipline for non-compliance with safety rules varies according to the severity of the occurrence. Company reserves the right to impose any or all of the following for infractions:
  - Verbal reprimands for minor infractions
  - Removal from Company property for serious infractions or repeat infractions.
- (b) Unsatisfactory safety/health conditions, slow response in correcting safety issues or actions may result in suspension of Supplier's Work. Extra time spent by Supplier correcting safety/health infractions does not entitle Supplier to additional compensation or extension of time.
- (c) Unsatisfactory safety/health conditions or practices not corrected may result in cancellation of Order by Company.
- (d) Supplier's supervision or management that fails to enforce or correct safety deficiencies or that attempt to mislead or cover up incidents will result in removal from Company property.

## **23. Chemicals**

- (a) Prior to commencing Work, Supplier shall provide training documentation certifying their employees have been trained in hazard communication.
- (b) Supplier shall maintain a list and inventory of chemicals brought on-site and shall maintain an on site copy of the Material Safety Data Sheet.
- (c) Supplier shall maintain an adequate type and size container/location to store chemicals.
- (d) Supplier shall ensure all containers of chemicals are labeled.
- (e) Supplier shall only permit a one-shift supply of chemicals into Company facilities.
- (f) Supplier shall remove all unused chemical products from the site upon completion of the job.
- (g) Supplier shall coordinate the proper transportation and disposal with the site Environmental Compliance Coordinator of any chemical waste that may be generated. Manifest must be provided to the Environmental Compliance Coordinator upon request.

## **24. Lead / Asbestos**

- (a) Supplier shall evaluate all surfaces coating prior to removing or disturbing for the content of lead.
- (b) Supplier shall ensure (in writing when requested) that surface coating placed on new/existing equipment or structures does not contain lead.
- (c) Supplier shall evaluate all insulation material for asbestos prior to removing or disturbing.
- (d) Supplier shall reasonably ensure that asbestos-containing material is not used in any product or insulation. Company shall be notified in writing of material or insulation products that contains asbestos and why non-asbestos containing material or insulation cannot be substituted.

## **25. Fire Protection**

- (a) Supplier shall provide and maintain all fire suppression equipment required for the protection of its equipment and materials.
- (b) Supplier shall complete and post a Welding and Flame Permit and provide a fire watch designated by an orange vest when welding, cutting, grinding or operations that produce an open flame is performed within or adjacent to company structures. The fire watch shall remain at the hot work location for at least 30 minutes after completion of hot work activity. This includes lunch/breaks.
- (c) Burn cloth will be utilized to protect station equipment and cable trays from sparks or slag.
- (d) No work activity requiring a shutdown or partial disablement of Company's fire protection system may be performed without obtaining prior written approval from Company.

- (e) Plastic/Fabric sheeting, tarps, and covers used inside or adjacent to company structures shall be flame retardant and UL/FM approved.
- (f) Oxygen and flammable gas cylinders shall not be stored in or with in 50 feet of Company facilities.
- (g) Compressed gas cylinders are to be secured in an upright position with non-combustible material such as chain or number 9 wire.
- (h) Wood used inside a permanent structure shall be UL/FM approved fire retardant. In cases where fire retardant wood is impractical, fire retardant coatings can be used. This section does not apply to scaffolding planks.
- (i) Aerosols with flash points below 100° F are not to be used.

## **26. Demolition and Equipment Removal**

- (a) Supplier shall prior to starting the demolition of structures or equipment conduct a survey to determine the condition of the structure or equipment and the impact demolition will have on adjacent structures or operations.
- (b) The survey will include the sampling of insulation materials and surface coating.
- (c) A competent/qualified person(s) shall conduct the survey.
- (d) Supplier shall develop a written plan based on the survey to ensure the safe removal of the structure or equipment. The competent/qualified person(s) shall be present during all phases of the demolition to ensure the plans are correctly implemented.
- (e) The plan shall include detailed steps on how the structure will be removed during all phases of the demolition. Plans shall be reviewed with the supplier employees performing the demolition with the competent/qualified person(s) prior to starting each shift or more often based conditions noted during the demolition.
- (f) Supplier shall limit and control access to the area where demolition is being conducted.

## **27. Fall Protection**

- (a) Supplier shall provide a means of 100% fall protection for employees engaged in activities 6 feet or more above lower levels or less than 6 feet when the area below the employee presents a hazard like falling onto operating equipment or electrical equipment. This includes working from ladders & all steel erection and scaffolding erection tasks.
- (b) Supplier shall provide a means of fall protection for employees working with in 6 feet of a roof edge, ductwork, tank tops, transformers, excavations or other equipment where the fall distance exceeds 6 feet.
- (c) Supplier shall ensure that all manufactured or custom designed fall protection systems or components are installed, used, and inspected in accordance to manufacture recommendations or those of a qualified person. Information pertaining to these systems and equipment shall be maintained at the site and available upon request.

- (d) Supplier shall submit, upon request, a written fall protection plan to be reviewed with the site company representative prior to the commencement of work involving fall protection activities that are complex or present an increased exposure for serious injury.
- (e) Supplier shall ensure that employees who use, inspect, or install fall protections systems are trained in the use and limitation of all components.
- (f) Supplier shall inspect fall protection systems & equipment at a minimum prior to each use.
- (g) Supplier employees who fail to comply with fall protection requirements will result in removal from all company property for a minimum of 5 years.
- (h) Supplier supervision that fails to implement and enforce fall protection requirements will result in removal from company property for a minimum of 5 years.

## **28. Process Safety Management**

- (a) Supplier employee shall not enter anhydrous ammonia or chlorine storage areas or work on anhydrous ammonia or chlorine systems or equipment without receiving approval from the company.
- (b) Suppliers shall notify the company if tasks must be performed on, around, above or that could impact the anhydrous ammonia systems or chlorine systems.

## **29. Housekeeping**

- (a) Supplier shall provide for and remove trash and other excess construction material from the work area on a daily basis.
- (b) Supplier shall secure hoses and cords with non-conductive materials so they are not in the walking working surface of walkways, scaffolding platforms or stairways.
- (c) Supplier shall not place tools or equipment where they obstruct walkways, stairwells, exits or entranceways to equipment or fixed ladders.
- (d) Supplier shall maintain all work areas in a generally clean condition, floors, walkways, and working surfaces shall be maintained free of excess dirt and other materials.

## **30. Inorganic Arsenic**

- (a) F&H locations that utilize eastern bituminous coal as a fuel could be applicable to the inorganic arsenic standard during certain maintenance activities.
- (b) Maintenance activities that are involved with the fireside of the boiler or in areas that contain fly ash could be applicable to the standard.